

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

DONALD W. SANDERS,

Plaintiff,

vs.

MARK DOBBS, et al.,

Defendants.

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Case No. 1:21-cv-117-SEP

**MEMORANDUM AND ORDER**

This matter is before the Court upon review of Plaintiff's file. On August 17, 2021, Plaintiff Donald W. Sanders filed a Prisoner Civil Rights Complaint pursuant to 42 U.S.C. § 1983 and a Motion for Leave to Proceed *in forma pauperis*. Docs. [1]; [2]. In his Complaint, Plaintiff alleges that three employees of the Butler County Sheriff's Department violated his constitutional rights by engaging in excessive force and denying him medical care. Doc. [1] at 4-6. He also alleges ineffective assistance of counsel against the attorney who represented him in his federal criminal case. *Id.* at 3. Plaintiff seeks punitive damages against the Butler County employees, and asks the Court to vacate, set aside, or correct his federal sentence due to the alleged ineffective assistance of counsel.

On November 12, 2021, the Court reviewed Plaintiff's Complaint pursuant to 28 U.S.C. § 1915. Doc. [5]. The Court granted Plaintiff's Motion to Proceed *in forma pauperis*, and determined this action was subject to dismissal for two reasons: (1) his request to vacate, set aside, or correct his federal sentence was an inappropriate form of relief in a civil rights action; and (2) it was unclear from his allegations how two of the three Butler County Defendants specifically assaulted plaintiff or who denied him medical care. *See id.*

The Court directed Plaintiff to file an amended complaint to cure his pleading deficiencies and provided him with clear instructions on how to amend. Specifically, the Court instructed Plaintiff to file the amendment on a Court-provided form and to format his statement of the claim by "writing [each] defendant's name" and in "separate, numbered paragraphs under that name" to "set forth a short and plain statement of the facts that support his claim or claim

against that defendant.” *Id.* at 4-5. Plaintiff was mailed the appropriate form and warned that his failure to timely comply would result in the dismissal of this action without prejudice and without further notice.

On December 13, 2021, Plaintiff filed an Amended Complaint on notebook paper. Doc. [6]. Despite the Court’s clear and explicit instructions, the submission was not on a Court-provided Prisoner Civil Rights Complaint form, and Plaintiff failed to format his statement of the claim in the manner directed. On December 21, 2021, the Court provided Plaintiff with “one final opportunity” to submit a complaint in compliance with the local rules of this Court and the Federal Rules of Civil Procedure. *See* Doc. [7].

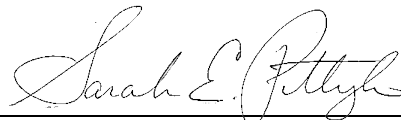
Plaintiff’s Amended Complaint was due on January 21, 2022. To date, he has not complied with the Court’s December 21, 2021, Memorandum and Order, nor sought additional time to do so. The Court gave Plaintiff meaningful notice of what was expected, cautioned him that his case would be dismissed if he failed to timely comply, and gave him additional time. Therefore, Plaintiff’s action is dismissed without prejudice for failure to comply with the Court’s Order and failure to prosecute his case. *See* Fed. R. Civ. P. 41(b); *see also Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (a district court has the power to dismiss an action where the plaintiff fails to comply with any court order); *Dudley v. Miles*, 597 F. App’x 392 (8th Cir. 2015) (per curiam) (affirming dismissal without prejudice where a self-represented plaintiff failed to file an amended complaint despite being cautioned that dismissal could result from failure to do so). This dismissal will not count as a “strike” for purposes of 28 U.S.C. § 1915(g).

Accordingly,

**IT IS HEREBY ORDERED** that this action is **DISMISSED** without prejudice. A separate Order of Dismissal will be entered herewith.

**IT IS HEREBY CERTIFIED** that an appeal from this dismissal would not be taken in good faith.

Dated this 4<sup>th</sup> day of February, 2022.



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SARAH E. PITLYK  
UNITED STATES DISTRICT JUDGE